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April 29, 2011

VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

FILED
MAY 2 2011
SURFACE
TRANSPORTATION BOARD

Re: **Finance Docket No. 35502**
Northern Plains Railroad, Inc. -- Intra-Corporate Family
Operation Exemption -- Mohall Central Railroad, Inc.

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Verified Notice of Exemption Pursuant to 49 C.F.R. § 1180.2(d)(3)**, dated April 29, 2011. A check in the amount of \$1,400, representing the appropriate fee for this filing, is attached.

One extra copy of this transmittal letter and of the Notice also are enclosed. I would request that you date-stamp those copies to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

Thomas J. Litwiler
Attorney for Northern Plains Railroad, Inc.

ENTERED
Office of Proceedings
MAY 2 - 2011
Part of
Public Record

TJL:tl

Enclosures

FEE RECEIVED
MAY 2 2011
SURFACE
TRANSPORTATION BOARD

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ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 35502

NORTHERN PLAINS RAILROAD, INC.
-- INTRA-CORPORATE FAMILY OPERATION EXEMPTION --
MOHALL CENTRAL RAILROAD, INC.

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SURFACE
TRANSPORTATION BOARD

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)

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(312) 252-1500

**ATTORNEY FOR NORTHERN PLAINS
RAILROAD, INC.**

Dated: April 29, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35502

NORTHERN PLAINS RAILROAD, INC.
-- INTRA-CORPORATE FAMILY OPERATION EXEMPTION --
MOHALL CENTRAL RAILROAD, INC.



VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)

Northern Plains Railroad, Inc. ("NPR") hereby files this verified notice of exemption under 49 C.F.R. § 1180.2(d)(3) for an intra-corporate family transaction in which NPR will enter into a new agreement to continue its operation of the rail line of Mohall Central Railroad, Inc. ("MHC"). NPR and MHC are commonly controlled by Gregg F. Haug.

The proposed operation is a transaction within a corporate family that will not adversely affect the level of any existing rail service and will not result in significant operational changes or any change in the competitive balance with carriers outside of the NPR/MHC corporate family.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), NPR submits the following information:

Description of the Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)

NPR is a Class III common carrier by rail which leases and operates rail lines in Minnesota and North Dakota. See Northern Plains Railroad, Inc. -- Lease Exemption -- Soo Line Railroad Company, Finance Docket No. 35382 (STB served August 6, 2010). MHC is a Class III common carrier by rail which owns approximately 19.31 miles of line extending between

Milepost 48.19 near Munich, North Dakota and Milepost 67.5 near Calvin, North Dakota (the "MHC Line"). See Mohall Central Railroad, Inc. -- Acquisition and Operating Exemption -- Rail Line of BNSF Railway Company, Finance Docket No. 34759 (STB served October 25, 2005); Mohall Central Railroad, Inc. -- Abandonment Exemption -- In Nelson, Ramsey and Cavalier Counties, ND, Docket No. AB-1003X (STB served October 29, 2007) ("MHC Abandonment I"); Mohall Central Railroad, Inc. -- Abandonment Exemption -- In Cavalier County, ND, Docket No. AB-1003 (Sub-No. 1X) (STB served December 16, 2010) ("MHC Abandonment II"). NPR operates the MHC Line pursuant to an October 18, 2005 Operating Agreement with MHC. See Northern Plains Railroad, Inc. -- Operation Exemption -- Rail Line of Mohall Central Railroad, Inc., Finance Docket No. 34780 (STB served December 29, 2005).¹

NPR, MHC and a third Class III rail carrier, Mohall Railroad, Inc., are commonly controlled by Gregg Haug. See Gregg Haug -- Continuance in Control Exemption -- Northern Plains Railroad, Inc., Mohall Railroad, Inc. and Mohall Central Railroad, Inc., Finance Docket No. 34828 (STB served May 10, 2006).

NPR and MHC have now agreed to enter into a new operating agreement that will replace the 2005 agreement and provide for NPR's continued operation of the MHC Line. Under the agreement, NPR will have the exclusive right to operate the MHC Line, and is responsible for costs and expenses related to operation and maintenance of the line. The new operating agreement will initially extend through December 31, 2011, and will subsequently and

¹ The operating authority acquired by NPR in Finance Docket No. 34780 encompassed the line segments subsequently abandoned by MHC in MHC Abandonment I and MHC Abandonment II. Because NPR never instituted rail service over those segments, the Board has confirmed that NPR did not require discontinuance authority prior to MHC's abandonment of the segments. MHC Abandonment I at 1, n.1; MHC Abandonment II at 1, n.1. While MHC has not yet consummated the abandonment authority in MHC Abandonment II, it will do so prior to the effective date of the operation transaction proposed in this notice of exemption.

automatically renew for successive terms of one year. NPR does not anticipate any changes to its existing operations under the new agreement.

NPR's proposed continued operation of the MHC Line is a transaction within a corporate family that will not result in adverse changes in service levels, significant operational changes or any change in the competitive balance with carriers outside of the NPR/MHC corporate family.

The full name and address of the applicant herein are as follows:

Northern Plains Railroad, Inc.
100 Railroad Avenue
P.O. Box 38
Fordville, ND 58231
(701) 229-3330

Any questions concerning this Notice should be sent to NPR's representative at the following address:

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

NPR intends to consummate operation of the MHC Line pursuant to the new operating agreement as of June 1, 2011.

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

The proposed exemption will allow NPR to continue its operation of the MHC Line, as it has successfully done since 2005.

States in Which Applicants' Property is Located: 49 C.F.R. § 1180.6(a)(5)

NPR owns and operates rail property in the states of Minnesota and North Dakota.

MHC owns rail property in the state of North Dakota.

Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)

A map of the MHC Line and the connecting rail lines of NPR is attached hereto as Exhibit 1.

Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)

A draft of the Operating Agreement between NPR and MHC is attached hereto as Exhibit 2.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

Pursuant to 49 U.S.C. § 11326(c), no employee protective conditions may be imposed on this transaction. NPR and MHC are both Class III rail carriers, and no other rail carriers are involved in the proposed transaction.

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(2)(ii), the proposed intra-corporate operation of the MHC Line by NPR is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in current or future carrier operations, i.e., changes that exceed the thresholds of 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(2), the proposed intra-corporate family operation transaction also is exempt from historic preservation reporting requirements. The execution of a new operating agreement by NPR and MHC with respect to the MHC Line will not result in significant changes in existing or anticipated operations.

Interchange Commitments: 49 C.F.R. § 1180.4(g)(4)

The proposed operating agreement between NPR and MHC contains no provision that would limit NPR's future interchange of MHC Line traffic with a third-party connecting carrier. The MHC Line connects only with NPR.

Respectfully submitted,

By: 

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEY FOR NORTHERN PLAINS
RAILROAD, INC.**

Dated: April 29, 2011

Exhibit 1



OPERATING AGREEMENT

THIS OPERATING AGREEMENT ("this Operating Agreement") is made and entered into as of this _____ day of _____, 2011 by and between **MOHALL CENTRAL RAILROAD, INC.**, a North Dakota corporation ("MHC") and **NORTHERN PLAINS RAILROAD, INC.**, a North Dakota corporation ("NPR"). NPR and MHC are sometimes each individually referred to herein as a "Party" and collectively as the "Parties."

WITNESSETH

WHEREAS, pursuant to exemption from the Surface Transportation Board ("STB") in STB Finance Docket No. 34759, Mohall Central Railroad, Inc. – Acquisition and Operation Exemption – Rail Line of BNSF Railway Company, MHC acquired from BNSF Railway Company the rail line between Milepost 72.9 at Sarles, North Dakota and Milepost 3.75 near Lakota, North Dakota;

WHEREAS, pursuant to that certain Operating Agreement between MHC and NPR dated October 18, 2005 ("the 2005 Operating Agreement"), NPR agreed to operate MHC's line;

WHEREAS, pursuant to exemption in STB Finance Docket No. 34780, Northern Plains Railroad, Inc. – Operation Exemption – Rail Line of Mohall Central Railroad, Inc., NPR has operated that portion of MHC's line between Milepost 67.5 near Calvin, North Dakota and Milepost 48.19 near Munich, North Dakota under the 2005 Operating Agreement;

WHEREAS, pursuant to exemption in STB Docket No. AB-1003X, Mohall Central Railroad, Inc. – Abandonment Exemption – in Nelson, Ramsey and Cavalier Counties, ND, MHC abandoned that portion of its line between Milepost 3.75 near Lakota, North Dakota and Milepost 48.19 near Munich, North Dakota;

WHEREAS, pursuant to exemption in STB Docket No. AB-1003 (Sub-No. 1X), Mohall Central Railroad, Inc. – Abandonment Exemption – in Cavalier County, ND, MHC abandoned that portion of its line between Milepost 72.9 at Sarles, North Dakota and Milepost 67.5 near Calvin, North Dakota; and

WHEREAS, MHC and NPR desire to terminate the 2005 Operating Agreement and enter into a new operating agreement between them under which NPR will continue to operate MHC's line between Milepost 48.19 near Munich, North Dakota and Milepost 67.5 near Calvin, North Dakota.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the Parties intending to be bound hereby agree as follows:

Section 1. Track and Property. MHC hereby grants to NPR the exclusive right to operate, and NPR hereby agrees to operate, the rail line of MHC between Milepost 48.19 near Munich, North Dakota and Milepost 67.5 near Calvin, North Dakota, a distance of

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approximately 19.31 miles (the "Line"). NPR's right to operate the Line includes the right to use, without limitation, the right of way, tracks, rails, ties, ballast, other track materials, switches, crossings, bridges, culverts, buildings and other structures, crossing warning devices and any and all appurtenances, improvements or fixtures on or affixed to the right of way.

Section 2. Purposes and Use. NPR shall have the right to use the Line for the provision of railroad transportation service thereon and thereover and all purposes ancillary thereto.

Section 3. Term. This Operating Agreement shall become effective on the date that STB authority or exemption for NPR's operation of the Line pursuant to this Operating Agreement becomes effective and shall have a term commencing on that date (the "Effective Date") through December 31, 2011 (the "Initial Term") and shall automatically renew for successive renewal terms of one (1) year (each a "Renewal Term"), unless this Operating Agreement is terminated by either Party pursuant to Section 16 herein. Each Renewal Term shall be on the same terms and conditions as set forth herein, unless otherwise mutually agreed to by the Parties. As used herein, "Term" shall mean either the Initial Term or any Renewal Term as applicable.

Section 4. Charges. NPR shall pay to MHC the following charges for each loaded car NPR moves to or from any point on the Line in any calendar year during the Term hereof:

<u>Total Annual Carloads</u>	<u>Rate</u>
0 – 200	\$
201 – 500	\$
Over 500	\$

In addition, NPR shall pay to MHC on the first day of each calendar month, xx dollars (\$) for each car, loaded or empty, stored on MHC on the first day of the previous calendar month. Empty cars at grain elevators on the Line awaiting loading in the ordinary course shall not be subject to this Section 4.

Section 5. Operations and Maintenance. NPR shall be solely responsible for all costs and expenses related to operation and maintenance of the Line. During the Term hereof, NPR shall maintain the Line to a standard that is sufficient to continue rail freight service commensurate with the needs of rail customers on the Line. Such maintenance shall include, but shall not be limited to, maintenance of highway grade crossings, grade crossing signals, signal protection devices, bridges, culverts and other structures, and the sub-roadbed related to providing rail freight transportation service on the Line. NPR shall have the right to remove, replace, add to or relocate tracks on the Line in the interest of cost or operating efficiency, provided that a continuous and usable line of railroad between the end points identified in Section 1 herein is maintained. MHC shall have the right to audit the records of NPR during reasonable business hours to assure compliance with the requirements of this Section 5.

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Section 6. Representations and Warranties. NPR and MHC each represents to the other that it is a corporation duly organized, validly existing, and in good standing under the laws of the State of North Dakota and that it has full power and authority to enter into this Operating Agreement.

Section 7. Compliance with Law. During the Term of this Operating Agreement, NPR, at its sole cost and expense, shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations. NPR at its sole cost and expense shall be solely responsible for obtaining any necessary authority or exemption from the STB for its operation of the Line under this Operating Agreement.

Section 8. Taxes. MHC shall be solely responsible for the payment of all taxes and assessments, general and special or otherwise which may be levied, assessed or imposed on the Line during the Term hereof. NPR shall be solely responsible for any taxes on railroad rolling stock, locomotives, equipment and other personal property.

Section 9. Liens. During the Term hereof, NPR shall not permit any lien or encumbrance on the Line unless such lien or encumbrance has been agreed to in writing by MHC.

Section 10. Easements, Leases and Licenses. MHC retains the sole right to grant, manage, renew, enforce and terminate all existing and future easements, leases, licenses and occupations, including but not limited to pipe lines, fiber optic or other communication systems or signboards ("MHC Agreements") and to retain all compensation or proceeds therefrom, provided however that MHC shall ensure that the exercise of any rights under such MHC Agreements shall not materially interfere with NPR's use of the Line.

Section 11. Eminent Domain. Each Party shall provide prompt notice to the other Party of any eminent domain proceeding involving the Line.

Section 12. Indemnity. NPR shall protect, defend, indemnify and hold harmless MHC against all expense, liability and claims of every kind, including reasonable attorney fees, by or on behalf of any person or entity arising out of NPR's operation of the Line or the failure by NPR to perform any of the terms or conditions of this Operating Agreement.

Section 13. Insurance. During the Term of this Operating Agreement, NPR shall obtain and maintain in effect at its expense insurance against liability for bodily injury and property damage in such amounts and in such forms of insurance policies, as may from time to time be required by MHC.

Section 14. Assignment. Neither Party shall assign this Operating Agreement without the prior written consent of the other Party.

Section 15. Environmental Matters. During the Term of this Operating Agreement, NPR shall not dispose of any wastes of any kind, whether hazardous or not, on the Line. NPR shall promptly furnish MHC written notice of any and all releases of hazardous

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wastes or substances of which it becomes aware which occur during the Term of this Operating Agreement whenever such releases are required to be reported to any federal, state or local authority and shall provide MHC with copies of any reports made to any governmental agency which relate to such releases.

Section 16. Termination. Either Party may terminate this Operating Agreement upon thirty (30) days prior written notice to the other Party. Termination shall not relieve or release either Party from any obligation incurred during the Term of this Operating Agreement. NPR at its sole cost and expense shall be solely responsible for obtaining any necessary authority or exemption from the STB for the discontinuance of its rail service on the Line and shall be solely responsible for any obligation to NPR employees under any labor protection imposed by the STB or any other regulatory or administrative agency having jurisdiction relating to NPR's discontinuance of service on the Line.

Section 17. Entire Agreement. This Operating Agreement contains the entire agreement between the Parties and may not be modified except by a written instrument subsequently executed by both Parties.

Section 18. Termination of 2005 Operating Agreement. The 2005 Operating Agreement shall terminate on the Effective Date of this Operating Agreement. Such termination shall not relieve or release either Party from any obligation incurred under the 2005 Operating Agreement prior to termination.

IN WITNESS WHEREOF, the Parties have caused this Operating Agreement to be duly executed on their behalf as of the date first herein written.

MOHALL CENTRAL RAILROAD, INC.

By: _____
Gregg F. Haug
President

By: _____
Byron D. Olsen
Vice President

NORTHERN PLAINS RAILROAD, INC.

By: _____
Gregg F. Haug
President

VERIFICATION

State of North Dakota)
)
County of Walsh) SS:

Gregg F. Haug, being duly sworn, deposes and says that he is ~~President~~ ^{Chairman} of Northern Plains Railroad, Inc., that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



Gregg F. Haug

SUBSCRIBED AND SWORN TO
before me this 25 day
of April, 2011.



Notary Public

My Commission expires:

